

# Mortgage Fraud in Florida: An Overview

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## The Problem

In 2006, and in 2007, Florida was ranked first in the United States for mortgage loans that contained alleged fraud against the lenders, according to MARI, the Mortgage Asset Research Institute. MARI ranked the Miami-Dade Metropolitan area fourth only behind New York, Los Angeles and Atlanta in instances of mortgage fraud.

There are unprecedented numbers of real estate foreclosures in Florida. In 2007, the Miami-Dade County clerk of courts recorded 26,391 foreclosures. In all of 2006 there were only 9,814 foreclosures recorded. This represents a 168 percent increase. And as of June 30, 2008, there were 25,104 foreclosures recorded.

It is clear that there is a direct correlation between foreclosures and mortgage fraud. A great percentage of these foreclosures have been attributed to mortgage fraud, either in a fraud for profit or fraud for property scheme.

Florida has the second highest rate in foreclosures filed, with a staggering 279,325 filed in 2007. This is 10 percent of all the foreclosures filed in the nation. Additionally, this number represents 2.02 percent of all households in the state filed foreclosures. *This has direct consequences on the well-being of our state and the ability of our local and county governments that rely on ad-valorem taxes to provide the necessary public services for the residents of their respective communities.*

Detectives from the Miami-Dade Police Department Economic Crimes Bureau revealed some disturbing trends in mortgage fraud offenses, yet they lacked the statutory tools to arrest and properly charge and prosecute these

crimes. Additionally, these offenses were traditionally investigated by federal agencies, such as the FBI and HUD's Office of Inspector General.

In October 2006, Miami-Dade officials—Mayor Carlos Alvarez and Robert Parker, police director—acted on this information and tasked me with drafting a statute to address mortgage fraud in Florida and solicit legislators to sponsor the bill in Tallahassee. Armed with the statistics and the language of the bill it was an easy sell; two distinguished legislators agreed to sponsor the bill: former Senate president and current State Senator Gwen Margolis, and state House Minority Leader Dan Gelber, both from Miami-Dade County.

Florida State Statute 817.545, the "mortgage fraud law," was signed by Governor Charlie Crist on June 16, 2007, and became effective October 1, 2007. The new statute created a third-degree felony for mortgage fraud and provides that a person commits the offense of mortgage fraud if, with the intent to defraud, the person knowingly:

- Makes any material misstatement, misrepresentation, or omission during the mortgage lending process with the intention that the information will be relied upon by a party in the mortgage lending process.
- Uses or facilitates the use of any material misstatement, misrepresentation, or omission during the mortgage lending process with the intention that the information will be relied upon by a party in the mortgage lending process.
- Receives any proceeds or any other funds in connection with the mortgage lending process that the person knew resulted from such misstatement, misrepresentation, or omission.
- Files with the clerk of the court for any county in Florida a document involved in the mortgage lending process which contains a material

misstatement, misrepresentation, or omission.

The law also provides that any mortgage fraud violation is considered to have been committed in the county in which the real property is located or in any county in which a material act was performed. This was an important function of the bill—in many instances, the property might be located in one county, the closing could take place in another and the funding be from yet another.

## Present Situation

Mortgage fraud is one of the fastest growing white collar crimes in the United States. The FBI defines mortgage fraud as a material misstatement, misrepresentation or omission relied upon by an underwriter or lender to fund, purchase or insure a loan. According to the FBI statistics, the number of reported mortgage fraud cases more than doubled from 17,127 in 2004 to 46,717 in 2007, based on suspicious activity reports required by financial institutions and other entities in the Department of the Treasury's Financial Crimes Enforcement Network. According to the FBI, mortgage fraud is well into the billion dollar range due to the sheer volume of the United States annual mortgage originations, which were estimated to be over \$3.4 trillion in 2006.

What accounts for this ranking? In recent years, there has been a dramatic growth in home ownership, accelerated by low interest rates and a loosening of credit, coupled with more exotic mortgages such as the sub-prime, interest only, no verification and others. This area is vulnerable for exploitation as credit is strong, profits are high and technology is enhancing criminals' ability to access financial institution data.

The driving force behind the mortgage fraud dilemma in Florida and the

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country is greed by fraudsters, realtors, mortgage brokers, title companies, appraisers, lenders and others. Most of these folks are supposed to have either a fiduciary duty or conduct business at an "arm's length" transaction. This means that they are supposed to represent their clients' interests and not of their own.

All parties involved were making enormous amounts of money and there was no oversight on the transactions. As long as legitimate purchasers were willing to pay inflated prices for real estate, the fraud continued to occur and fly under the radar screen. The market was supporting the increase in prices and the fraudulent transactions were unnoticed by law enforcement and state regulators from the Florida Department of Revenue's Office of Financial Regulation and Department of Business and Professional Regulation.

But then the bubble burst. By the end of 2006, the real estate market began to falter. Legitimate purchasers could no longer afford to qualify for home loans for any number of reasons. The property taxes, homeowners' insurance and the interest rates through adjustable rate or sub-primes all kicked in and legitimate purchasers could no longer afford the inflated prices; we went from a seller's market to a buyer's market. Defaults on home loans continued to rise and money from the secondary market began to dry up. People could no longer afford to make the payments and they sought relief through foreclosure or drastically reduced the price of their home in order to sell.

### How It Works

The FBI and the mortgage fraud statute have defined what mortgage fraud is, but how does it happen? The three most prevalent ways that the Mayor Alvarez' Mortgage Fraud Task

Force has identified are: soliciting a straw buyer and artificially inflating the appraised value of the property; using and filing fraudulent documents; or committing forgery or using false identification in the transaction.

### Straw Buyer

The first and by far the most common is by using a straw buyer. A straw buyer is a person with good credit who is paid an agreed-upon amount by a fraudster for the use of their credit to obtain financing and purchase a property. Normally the straw buyer would not qualify for a loan because he or she does not make enough money to make the payments, but because the straw buyer's credit is good, she or he can use an exotic loan product, such as the no document loan or stated income loan (neither of which require income verification) to obtain financing.

Once the straw buyer is recruited, the fraudsters locate a property. Normally, the property has been on the market for longer than a year and must be artificially inflated by an appraiser—also part of the fraudster's team. A closing or title company, sometimes run by an attorney, is also part of the team to manipulate documents later filed at the clerk's office. The lender (a bank or finance company) is normally the sole victim in these scams.

In a typical case, a fraudster will seek a seller whose property has been

on the market for a while. The fraudster offers the seller the asking price with terms, saying something like, "I will give you full price, but I want to make some changes to the house." The "changes" result in the fraudster seeing an extra \$100,000 in financing above the selling price. The fraudster then convinces the seller to provide a check for the additional moneys at the closing table and everyone is happy.

The straw buyer and the seller sign all the paperwork and the seller is issued a cashier's check for the specified price. The seller then issues a check to the fraudster, who pays the closing agent, the straw buyer and the appraiser—whose artificially-inflated appraisal was vital to the process. The fraudster walks away from the property with the remaining \$75,000 or so, never intending to pay the finance company. After a few months, the property goes into foreclosure but the fraudster is long gone.

### False Documents

The second most common scheme is carried out by filing false documents. In this situation, fraudsters use the "quit claim deed." When filed at the clerk's office, this document relinquishes the attesting party's claims on the property title to the conferring party. A quit claim deed can be filed in a few minutes at the clerk's office: it only needs two signatures, a notary

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*The FBI reported nearly 3,000 mortgage fraud cases in the Miami-Dade County area, ranking second highest in the top ten spots for fraud in 2007.*

stamp and \$10. The fraudster can take the title away from the deeded owner and either seeks to finance or sell the property right out from under the unsuspecting owner.

Two recent cases illustrate how the scenario can work. In the first, the fraudster used a computer to look up property folios to find out what type of encumbrances they had. How big was the mortgage? Does the property have a mortgage at all?

The fraudster targeted older residential neighborhoods, where people had lived more than 30 years in their homes. These homes were in the inner city and most residents did not have Internet access or a computer. Once the fraudster picked out the properties, he filed the quitclaim deeds and took out a \$150,000 mortgage on one home and a \$65,000 second mortgage on another.

The second case was even more distressing. The fraudster was aware that a family was out of town for a two-month vacation. He filed a fraudulent quit claim deed and "sold" the property to an unsuspecting purchaser. The fraudster walked away with \$325,000 in proceeds and the legitimate homeowners returned home to find another family living in their house.

**Forgery**

The third type of prevalent mortgage fraud is forging documents during the funding of a real estate transaction. This takes place at the closing table, when the closing documents are changed prior to faxing to the lender. A closing agent working with a fraudster will change the numbers on the documents to reflect a higher price than the actual transaction price. This is a very difficult type of

fraud because two complete sets of documents must be forged and done without the knowledge of the seller who is signing the original documents.

**Interdiction**

In the last two years, investigations, arrests and prosecutions have increased dramatically. In Miami-Dade County, the Miami-Dade County Police Department's number of reported mortgage fraud cases increased from 16 in 2005 to 78 in 2006 and then to more than 1,000 in 2007. Currently, the department is actively working 575 open cases.

The FBI reported nearly 3,000 mortgage fraud cases in the Miami-Dade County area, ranking second highest in the top ten spots for fraud in 2007. The FBI's other "hot spots" within the state are Fort Myers, Pompano Beach, Broward County and Orlando.

**Florida's Solution**

The new mortgage fraud law is an important tool for law enforcement to help solve the mortgage fraud epidemic that has plagued our state. In September 2007, the Miami-Dade County mayor, Carlos Alvarez, created the Mortgage Fraud Task Force. This public and private partnership will reduce mortgage fraud and prevent victimization of individuals and businesses with education, legislation, regulation, law enforcement and prosecution.

The task force is the model for the anticipated "Governor's Florida Hope Council and Mortgage Fraud Task Force." The council and task force will consist of an executive board responsible for policy, decision-making, vi-

sion and direction. The executive board will be chaired by the lieutenant governor and staffed with appointments by the governor, including public sector leaders, business leaders, law enforcement professionals and prosecutors. The board will report findings and recommendations to the governor.

The Hope Council and Mortgage Fraud Task Force's mission statement is: "We are Florida's public and private partnership, created to address and reduce incidents of foreclosure and mortgage fraud by preventing victimization through effective education, legislation, regulation, law enforcement and prosecution."

The council and task force has five separate committees, responsible for an important portion of the Hope Council and Mortgage Fraud Task Force mission.

*Law Enforcement Committee:* responsible for the detection, investigation, apprehension and prosecution of mortgage fraud subjects and enterprises

*Legislative Committee:* responsible for enhancing current laws and creating new laws; all these efforts are in furtherance of the Hope Council and Mortgage Fraud Task Force mission

*Regulatory Committee:* enhances and enforces regulations on all parties involved in the mortgage transaction

*Business Partnership Committee:* creates and transmits effective business practices to enhance cooperation with law enforcement and regulatory agencies as well as between different professions involved in the mortgage transaction

*Education and Prevention Committee:* creates public awareness of fore-



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closure prevention, mortgage fraud and predatory lending practices through printed literature, newspaper articles, television reports and speaking engagements

The governor's Mortgage Fraud Task Force will be one of only a few task forces created throughout the United States. However, this council and task force is unique due to its public and private partnership. The home foreclosure and mortgage fraud epidemic cannot be solved by government alone; a concerted global effort to attack foreclosures and mortgage fraud on all levels must be undertaken.

The Hope Council and Mortgage Fraud Task Force was created to reduce incidents of foreclosures by changing the way business is done. The group also seeks to prevent those who have defrauded from ever being able to do so again. It will educate the public to prevent victimization and swiftly arrest and prosecute violators of mortgage fraud.

### Task Force Successes

The Mortgage Fraud Task Force has already made inroads against mortgage fraud in the Miami-Dade County community. The Legislative Committee crafted new legislation and enhanced Florida State Statute 817.545. Florida House Bill 743 was sponsored by Representative Carlos Lopez Cantera (R-113) and SB 1116 was sponsored by Senator Gwen Margolis (D-35), both task force members. The bills passed the Florida House and Senate unanimously and Governor Crist signed the law, which became effective July 1.

The new law, Florida State Statute 193.133, requires law enforcement officers who suspect mortgage fraud to notify the appropriate county property appraiser's office. The property appraiser's office will re-evaluate the suspect property as well as properties around it. This will reduce the taxes of the properties affected by the fraud

and not only the individual property involved in the scheme. The bill also enhanced FSS 817.545, making it a second degree felony for a mortgage fraud over \$100,000.

The Law Enforcement Committee has been doing the bulk of the "heavy lifting" related to this issue. To date, there have been more than a few thousand reports and inquiries and currently there are 575 active investigations. More than 71 arrests have been made, reflecting more than \$30 million in mortgage fraud.

The regulatory committee has been working with the Florida Office of Financial Regulation and the Department of Business and Professional Regulations. They are working to expedite emergency hearings to suspend the licenses of real estate agents and mortgage brokers involved and arrested for mortgage or other related fraud. If convicted, the licenses will be revoked. The immediate suspension will prevent the agent or broker from victimizing any unsuspecting home purchasers.

The Business Partnership Committee has created the real estate best practices manual, distributed to Miami-Dade County agents. The committee also sought private funding for costs involved in investigating and prosecuting mortgage fraud.

The Education Committee has created a public complaint form about mortgage fraud: [www.miamidade.gov/mayor](http://www.miamidade.gov/mayor). The group has also undertaken an aggressive media campaign to educate the public and prevent victimization and compiled an established database of speakers who can address the topic.

Although mortgage fraud is a significant problem for our country, I am confident that the small steps in Miami-Dade can be duplicated in Florida and then throughout the nation. Hard work and perseverance by dedicated public servants and industry professionals can unravel the mess created by greedy lenders and fraudsters.

### About the Author

Glenn Theobald is chief legal counsel for the Miami-Dade Police Department and has worked for the department for 25 years. He provides legal advice and counsel to the department director with a staff of ten attorneys and 14 support personnel.

He joined the Miami-Dade Police Department in 1983 as a police officer and worked his way through the ranks to become chief in November 2005. Before he became the chief counsel, Theobald was commander of the Intracoastal District, overseeing more than 200 sworn and civilian staff.

He has initiated national award-winning programs that have reduced crime and created community partnerships within Intracoastal District, neighboring municipalities and the entire police department. Theobald authored and lobbied the successful enactment of FSS 817.545 (Florida Mortgage Fraud Law, 2007), FSS 193.133 (Property Appraisers, 2008), and FSS 817.545(5b) (Enhanced Penalties for Mortgage Fraud, 2008). He is also chairman of the Miami-Dade County Mortgage Fraud Task Force.

Theobald received a bachelor's degree from Barry University, a masters degree in public administration from the University of Miami and his juris doctor from the University of Miami's School of Law. He was admitted to the Florida Bar in 2002.

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